IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 939 of 1979

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

M/S. LORANKUMAR KAMALKUMAR

Versus

HIMMAT TRANSPORT SERVICE DELETED AS PER CT'S ORDER

Appearance:

MR PV NANAVATI for Petitioner

MR VC DESAI for Respondent No. 1, 2

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 30/06/2000

ORAL JUDGEMENT

1. The plaintiff has filed a suit being Civil Suit No. 2882 of 1973 to recover Rs. 3650.97 by way of damages and Rs. 342.93 for loss of profit and sundry expenses in the consignment loss against the defendants. The City Civil Court, Ahmedabad, by its judgment and order dated 22nd November 1978, dismissed the said suit

against which the present appeal is filed.

2. The plaintiff, a partnership firm, filed a suit against the defendant no.1, a common carrier for recovery of damages for loss of goods and defendant no.2, an insurer. on the basis of the agreement of insurance with respect to the said goods. The goods are said to have been entrusted to the defendant no.1 on 5th July 1972 under defendant no.1's lorry receipt nos. 75008 and 7509. The value of the goods is said to be Rs. 1812.68 plus Rs. 1838.29, thus in all Rs. 3650.97.

3. The defendant no.1, did not file any independent written statement, but prayed for leave to defend the suit on the basis of the affidavit filed at Ex. 15 which was treated by the learned trial judge to be the defence of the defendant no.1. While denying the claim of the plaintiff, the defendant no.1 contended that the goods entrusted to the defendant no.1 on 5th July 1972 reached the destination Amreli within two days and the same were delivered to the consignee and, therefore, no damage is suffered by anyone and, therefore, the suit did not lie.

4. In the written statement at Ex. 27, the defendant no.2, the insurer, while admitting the contract of insurance, denied the liability by contending that it was not true that the goods were not delivered by the defendant no.1 at destination Amreli. It was further contended that since the plaintiff's customer i.e. the purchaser of goods at Amreli did not take the delivery of the goods, the plaintiff had directed the defendant to redeliver the goods from Amreli to Ahmedabad and that the insurance policy was effective only for the transit of goods from Ahmedabad to Amreli and not relating to redelivery of goods from Amreli to Ahmedabad and that in the above circumstances, if the goods were lost, the defendant no.2 was not liable. The defendant no.2 also challenged the plaintiff's averment in the plaint that the plaintiff first came to know about the loss of goods on 3rd February 1973 and contended that the said averment was falsely made to bring the suit within the period of limitation.

5. On the basis of the aforesaid pleadings, the learned trial judge framed issues at Ex. 33 after appreciating oral as well as documentary evidence and the learned judge recorded a finding that the defendant no.1 was doing the business as a common carrier and on 5th July 1972, the plaintiff entrusted at Ahmedabad two parcels containing cloth for carriage to Amreli. The learned judge also recorded a finding that the plaintiff has

proved that the defendant no.1 has failed to deliver the goods entrusted for carriage and that such failure was due to negligence on the part of the defendant no.1. The learned judge also recorded a finding that the market value of the goods lost was Rs. 1812.68 and Rs. 1813.25, thus totalling to Rs. 3650.97. This finding has been recorded by the learned trial judge after considering the evidence produced on behalf of the plaintiff which has not been challenged by the defendant. The learned trial judge, however, did not grant the amount of profit mentioned in the bills Ex. 37 and 38 on the ground that since the plaintiff has earned the profit, he is not entitled to any further claim for loss of profit. Therefore, he has disallowed the claim of profit and loss of interest to the extent of Rs. 342.93. In spite of the aforesaid findings in favour of the plaintiff, the learned judge rejected the plaint of the plaintiff on the ground that the suit is barred by the provisions of Limitation Act since no notice of claim was served to the carrier by the plaintiff within the time prescribed under the Carriers Act. In view of this, the learned judge dismissed the suit.

6. Heard Mr. P.V.Nanavati, learned Counsel for the appellant and Mr. V.C.Desai, learned Counsel for the respondent no.2.

It appears that the respondent no.1 was deleted in pursuance of the order passed by this Court.

7. Mr.Nanavati, learned Counsel for the appellant submitted that the learned trial judge has erred in interpreting section 10 of the Carriers Act and has further erred in holding that the notice of claim was not served upon the defendant no.1 Carriers within the time limit under section 10 of the Carriers Act. Mr. Desai, on the other hand, supported the reasoning of the learned trial judge in toto. Section 10 of the Carriers Act provides that no suit shall be instituted against a common carrier for the loss of or injury to the goods entrusted to it for carriage unless notice in writing of the loss of or injury has been served before the institution of the suit and within six months time, when the loss or injury first comes to the knowledge of the plaintiff. On the plain reading of this section, it is clear that the plaintiff is required to file a suit for the loss of or injury to the goods entrusted to the Carriers within six months of the time when the loss or injury first came to the knowledge of the plaintiff. From the averments made in the plaint as well as from the evidence of the plaintiff's witness Kirankumar Ex. 34,

it is clear that the plaintiff entrusted the goods to the defendant no.1 on 5th July 1972 under the defendant no.1's lorry receipts no. 7508 and 7509. It further appears that the plaintiff's customer at Amreli did not retire the documents sent to him through bank on 22nd September 1972. The plaintiff requested the defendant no.1 Carrier to redirect the goods at Ahmedabad, but the defendant no.1 did not reply to that, as a result, the plaintiff sent his Munim personally on 3rd February 1973 to Amreli and it was only on that day that the plaintiff for the first time came to know that the goods were lost. It is not in dispute that the claim was made on 5th February 1973. The necessary documents are at Ex. 39, 40 and 41. Ex. 39 is dated 22nd November 1972 addressed by the plaintiff to the defendant no.1 requesting the defendant no.1 to redirect the goods to Ahmedabad. Ex. 40 dated 29th December 1972 is virtually to the same effect. Ex. 41 dated 5th February 1973 is the notice of claim. Thus, it appears that the plaintiff, for the first time, came to know about the loss of goods on 3rd February 1973 and the claim Ex. 41 was filed on 5th February 1973.

8. Section 10 of the Carriers Act requires a party to file suit against the Carrier for the loss of or injury to the goods entrusted to him for carriage provided he serves notice in writing of the loss or injury to the Carrier before the institution of the suit within six months of time from the loss or the injury came to the knowledge of the plaintiff. Thus, reading the aforesaid provisions, it is clear that the loss would occasion when the defendant no.1 finally informs that it was not possible for them to trace the goods. There is no communication from defendant no.1 that the goods in question have been lost by them. In absence of any such communication, it cannot be contended that the plaintiff had the knowledge about loss of goods. As stated above, the plaintiff for the first time came to know about the loss of goods on 3rd February 1973 when its Munim personally went to Amreli to inquire about the goods. Unfortunately, in the instant case, the learned trial judge has equated non-reaching of the goods at destination with the loss of goods. In my opinion, the knowledge of non arrival of goods at destination is one thing and the knowledge about the loss of goods is altogether a different thing. Merely because the goods did not reach the destination, one cannot jump to the conclusion that the goods were lost. In my opinion, the learned judge has definitely committed an error in interpreting section 10 of the Carriers Act and has misdirected himself by holding that the suit is barred by

limitation. It is unfortunate that the suit is dismissed on technical ground.

9. In the result, the suit filed by the plaintiff is allowed by holding that the plaintiff is entitled to recover Rs. 3650.97 being the loss suffered by it on account of non delivery of goods by the defendant no.1 and, therefore, the defendants are held to be jointly and severally liable to pay the said amount to the plaintiff. The plaintiff, therefore, shall recover the amount of Rs. 3650.97 from the defendant no.2, being the insurance company.

Since Mr. Nanavati, learned Counsel for the appellant has conceded that the plaintiff has not suffered a loss of profit and the loss of interest to the extent of Rs. 342.93, the plaintiff will not be entitled to the said amount.

The appeal is accordingly allowed with no order as to costs.

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